

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 10/15/2007	Department ID Number: ED 07-42

CITY OF HUNTINGTON BEACH REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth*
PENELOPE CULBRETH-GRAFT, DPA, CITY ADMINISTRATOR

PREPARED BY: STANLEY SMALEWITZ, DIRECTOR OF ECONOMIC DEVELOPMENT *SS*
TRAVIS K. HOPKINS, PE, ACTING DIRECTOR OF PUBLIC WORKS-ENGINEERING *TH*

SUBJECT: APPROVE HEIL AVE. WIDENING IMPROVEMENT PROJECT
PARTIAL LAND PURCHASE (7886 ALHAMBRA AVENUE)

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)
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Statement of Issue: A partial land purchase agreement in the amount of \$324,069, along with escrow fees not to exceed \$4,000 with Hidayat, LLC for the partial purchase of real property at 7886 Alhambra Avenue (APN 142-103-25), is submitted for approval (Attachment #1). Partial acquisition of this property is necessary to complete improvements for the widening of Heil Avenue between Beach Blvd. and Silver Lane.

Funding Source: Funds are budgeted in the Traffic Impact Fund, Street Widening, Land Purchase, Account No. 20690001.81000.

Recommended Action: Motion to:

1. Approve the Agreement for Acquisition of Real Property and Joint Escrow Instructions; and authorize the Mayor and City Clerk to execute the agreement and other related necessary documents.

Alternative Action(s): Do not approve the purchase agreement for 7886 Alhambra Avenue and direct staff to renegotiate the acquisition terms with Hidayat, LLC.

E-3

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 10/15/2007

DEPARTMENT ID NUMBER: ED 07-42

Analysis:

The Heil Avenue Widening Project (CC-1230) will construct the street improvements necessary to widen the north side of Heil Avenue between Silver Lane and Beach Boulevard to its full eighty-foot secondary arterial street width. Currently, this segment of Heil Avenue provides one through-lane in each direction, bike lanes, and a striped median. The widened street section will provide one additional through-lane in each direction. This project includes relocation of existing utility poles and the construction of new asphalt pavement, concrete curb, gutter, sidewalk and street lights. An eight-foot high wall will be constructed along the proposed northerly right-of-way.

The subject property (APN 142-103-25) is one of seven parcels that is required for this project, four of which only require partial land acquisition. At such time as the remaining real property offers are accepted, those agreements will be submitted to City Council for approval. The amount of all offers to purchase made by the City for this project will be consistent with real estate market values as described in appraisal reports provided by Netzer and Associates dated June 14, 2007.

This widening project requires the acquisition of the southerly 25 feet of the above mentioned parcel. The price of \$324,069 includes market value of the land acquired, value of the temporary construction easement, and severance damages.

Award of the project construction contract is estimated for June 2008 with construction scheduled to begin shortly thereafter. A map showing the subject parcel and right-of-way acquisition is attached as Exhibit B in the Agreement for Acquisition.

Strategic Plan Goal: C-1 Improve transportation by providing an additional through-lane in each direction.

Environmental Status: Not applicable to property purchase.

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Agreement for Acquisition of Real Property and Joint Escrow Instructions between the City of Huntington Beach and Hidayat, LLC for a part of real property located at 7886 Alhambra Avenue.

E3.3

ATTACHMENT #1

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APN: 142-103-25
TITLE REPORT NO: 73808093-M08
PROJECT: HEIL AVENUE WIDENING PROJECT

**AGREEMENT FOR ACQUISITION OF REAL PROPERTY
AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT is entered into this ____ day of _____, 2007 by and between the City of Huntington Beach, a Municipal Corporation (hereinafter called "City"), and Hidayat, LLC, a California Limited Liability Company (hereinafter called "Seller") for acquisition by City of certain real property hereinafter set forth.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **AGREEMENT TO SELL AND PURCHASE.** Seller agrees to sell to City, and City agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement (hereinafter called "Agreement"), all that certain real property (hereinafter called "Property") situated in the City of Huntington Beach, County of Orange, State of California, and legally described as follows:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO
AND BY THIS REFERENCE MADE A PART HEREOF

2. **PURCHASE PRICE.** The total purchase price, payable in cash through escrow, shall be the sum of

**Three Hundred Twenty Four Thousand and Sixty-Nine Dollars
(\$324,069.00)**

3. **CONVEYANCE OF TITLE.** Seller agrees to convey by Grant Deed to City fee simple title to the Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes EXCEPT:

- a. Non-delinquent taxes for the fiscal year in which this transaction closes which shall be cleared and paid in the manner required by Section 4986 of the Revenue and Taxation Code, if unpaid at the close of this transaction.
- b. Quasi-public utility, public alley, public street easements, and rights of way of record (except rights in any such items conveyed under this Agreement).
- c. Items numbered 1, 2, 3 and 5 in the above referenced preliminary title report issued by Chicago Title Company dated July 26, 2007.

- 3.1. Seller agrees to convey to City a Temporary Construction Easement in, on, over and above the portion of the subject property depicted on the attached Exhibit "C" and incorporated herein by this reference.

4. **TITLE INSURANCE POLICY.** Escrow Agent shall, following recording of said deed(s) to City, provide City with CLTA Standard Coverage Policy of Title Insurance in the amount of \$245,000.00 issued by Chicago Title Company. Title Company showing the title to the property vested in City, subject only to the exceptions set forth in Paragraph 3 of this Agreement and the printed exceptions and stipulations in said policy. City agrees to pay the premium charged therefore.

5. ESCROW. City agrees to open an escrow in accordance with this Agreement at an escrow company of City's choice. This Agreement constitutes the joint escrow instructions of City and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to perform all acts reasonably necessary to close this escrow in the shortest possible time.

Seller shall execute and deliver said deed(s) as referenced in Paragraph 3, above, to Escrow Agent concurrently with this Agreement, or as soon as possible thereafter when said deeds are available. After opening of escrow, City will deposit an executed Certificate of Acceptance with Escrow Agent. City agrees to deposit the purchase price upon demand of Escrow Agent. City and Seller agree to deposit with Escrow Agent any additional instruments as may be reasonably necessary to complete this transaction.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

6. ESCROW AGENT IS AUTHORIZED TO, AND SHALL:

- a. Pay and charge Seller, upon Seller's written approval, for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement, excluding any penalty for prepayment to any lienholder in compliance with Code of Civil Procedure Section 1265.240 of the Eminent Domain Law;
- b. Pay and deduct from the amount shown in Paragraph 2 above, any amount necessary to satisfy any delinquent taxes together with penalties and interest thereon, and/or delinquent or non-delinquent assessments or bonds except those which title is to be taken subject to in accordance with the terms of this Agreement;
- c. Pay and deduct from the amounts payable to Seller under Paragraph 2 of this Agreement, up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with terms and conditions of said trust deed(s) or mortgage(s) including late charges, if any, except penalty (if any), for payment in full in advance of maturity, shall, upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder;
- d. Pay and charge City for all recording fees incurred in this transaction including payment of reconveyance fees and forwarding fees for partial or full reconvenances of deeds of trust or release or mortgage by City;
- e. Pay and charge City for any escrow fees, charges, and costs payable under Paragraph 7 of this Agreement;
- f. Disburse funds and deliver deed when conditions of this escrow have been fulfilled by City and Seller.

The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is authorized if necessary or proper in the issuance of said policy of title insurance.

All time limits within which any matter herein specified is to be performed may be extended by mutual agreement of the parties hereto. Any amendment of, or supplement to, any

instructions must be in writing.

TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE.

7. ESCROW FEES, CHARGES AND COSTS. City agrees to pay all City's and Seller's usual fees, charges, and costs which arise in this escrow.

8. FULL AND COMPLETE SETTLEMENT. Seller hereby acknowledges that the compensation paid to Seller through this Agreement constitutes the full and complete settlement of any and all claims against City, by reason of City's acquisition of the Property, specifically including, but not limited to, any and all damage to Seller's remainder property by reason of the acquisition of the subject Property or the installation of the improvement project in the manner proposed, the value of improvements pertaining to the realty, leasehold improvements, any and all claims of rental or leasehold value and loss of business goodwill (excluding relocation benefits, if any), and any and all claims in inverse condemnation and for precondemnation damages, and any and all other claim that Seller may have, whether or not specifically mentioned here, relating directly or indirectly to the acquisition by City of this subject Property; however Seller and City, and each and all of their individual collective agents representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby release the other party, and each of them, from any and all obligations, liabilities, claims, costs, expenses, demands, debts, controversies, damages, causes of action, including without limitations those relating to just compensation, damages, which any of them now have, or might hereafter have by reason of any matter or thing arising out or in any way relating to any condemnation action affecting the subject Property.

9. CONSTRUCTION CONTRACT AND CURATIVE WORK.

- a. It is understood and agreed by and between the parties hereto in addition to the compensation shown in Paragraph 2 hereinabove, the City, its contractors or assigns, shall perform the following construction contract items at the time of the installation of the proposed project:

- i. NONE

All work performed under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances and regulations relating to such work and shall be completed in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated or reconstructed by the City, shall be left in as good condition as found.

- b. It is understood and agreed by and between the parties hereto that the compensation paid to Seller through this Agreement includes the value of and cost to remove, relocate, reconstruct, and/or refurbish the following improvements located on the Property.

- i. Landscaping (including the 2 trees at the rear corners of the parcel)

It is further understood between the parties hereto that if the improvements referred to in Paragraph 9b above are not removed from the subject property prior to March 1 2008, but not sooner than the close of escrow, City, its agents, contractors, or assigns, shall have the right to remove said improvements and dispose of same in any manner City deems appropriate without further notice or responsibility to Seller whatsoever.

10. PERMISSION TO ENTER ON PREMISES. Seller hereby grants to City, its authorized agents or contractors, if necessary by reason of the above-mentioned improvement, the right to enter upon Seller's property upon 48 hours prior written notice to perform the construction items referred to in Paragraph 9a above and for any of the following reasons.

a. To make necessary and reasonable inspections.

11. RENTAL AND LEASEHOLD INTEREST. Seller warrants that there are no third parties in possession of any portion of the Property as lessees, tenants at sufferance, trespassers, or invitees, and that there are no oral or written recorded or unrecorded leases or other agreements concerning all or any portion of the Property exceeding a period of one month. Seller further agrees to hold City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Seller for a period exceeding one month, EXCEPT: None.

12. ACQUISITION IN LIEU OF CONDEMNATION. Seller and City acknowledge that this transaction is a negotiated settlement in lieu of condemnation. Seller acknowledges that the sums received from City under this Agreement constitute full payment of all just compensation in eminent domain (including, but not limited to, compensation for the fair market value of the real property taken, severance damages, improvements to the realty, furniture, fixtures, equipment, the value of any leasehold interest, loss of inventory, loss of business goodwill, court costs, litigation expenses and any interest which might be due on such matters). Seller acknowledges that the amounts paid under this Agreement constitute the total amount due Seller, and that no further payments are due, owing or payable. Seller waives any other claims it might have for further payment or further compensation, and also waives any and all claims to any money on deposit in said action and further waives all attorney's fees, costs, disbursements, and expenses incurred in connection therewith.

13. WARRANTIES, REPRESENTATIONS, AND COVENANTS OF SELLER. Seller hereby warrants, represents, and/or covenants to City that:

- a. To the best of Seller's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.
- b. To the best of Seller's knowledge, there are no encroachments onto the Property by improvements on any adjoining property, nor do any buildings or improvements encroach on other properties.
- c. Until the closing, Seller shall not do anything which would impair Seller's title to any of the Property.
- d. To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, or other agreement or instrument to which Seller's property may be bound.
- e. Until the closing, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in these Warranties, Representations, and Covenants of Seller Section not to be true as of closing, immediately give written notice of such fact or condition to City.
- f. Seller, at the time of execution of this Agreement, is seized of the Property in fee simple absolute and is the lawful owner of and has good, indefeasible title to the Property.

14. **HAZARDOUS WASTE.** Neither Seller nor, to the best of Seller's knowledge, any previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substances, or related materials ("Hazardous Materials") on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property. The term "Hazardous Material" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as a "hazardous substances" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. S1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. S6901 et seq. (42 U.S.C. S6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, as amended by Liability Act, 42. U.S.C. S9601 et seq. (42 U.S.C. S9601).
15. **COMPLIANCE WITH ENVIRONMENTAL LAWS.** To the best of Seller's knowledge the Property complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environment Quality Act, and the rules, regulations, and ordinances of the city within which the subject property is located, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency, and all applicable federal, state, and local agencies and bureaus.
16. **INDEMNITY.** Seller agrees to indemnify, defend and hold City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Material on, under, in or about, or the transportation of any such materials to or from, the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in, or about, to or from, the Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost, or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease, or death,

tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, pollution, contamination, leak, spill, release, or other adverse effect on the environment). This indemnity extends only to liability created prior to or up to the date this escrow shall close. Seller shall not be responsible for acts or omissions to act post close of this escrow.

17. COUNTERPARTS. This agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.
18. CONTINGENCY. It is understood and agreed between the parties hereto that the completion of this transaction, and the escrow created hereby, is contingent upon the specific acceptance and approval of the City herein. The execution of these documents and the delivery of same to Escrow Agent constitute said acceptance and approval.
19. NO BROKERS. City and Seller each represents to the other that no brokers have been involved in this transaction. City and Seller agree to indemnify one another against any claim, suits, damages and costs incurred or resulting from the claims of any person for any fee or remuneration due in connection with this transaction pursuant to a written agreement made with said claimant.
20. JURISDICTION AND VENUE. This Agreement shall be governed by and constructed in accordance with the laws of the State of California. The parties consent to the jurisdiction of the California Courts with venue in Orange County.
21. ASSIGNMENT. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto. City may freely assign any or all of its interests or rights under this Agreement or under the Escrow without the consent of Seller.
22. COOPERATION. Each party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.
23. ENTIRE AGREEMENT, WAIVER AND MODIFICATION. This Agreement is the entire Agreement between the parties with respect to the subject matter of this Agreement. It supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth hereinabove.

"SELLER"

Hidayat, LLC, a California Limited
Liability Company

By: _____

By: _____

"BUYER"

CITY OF HUNTINGTON BEACH,
A California municipal corporation

Mayor

City Clerk

APPROVED AS TO FORM:

Frank M. Galt

City Attorney *mv-9-23-07*
10-1-07

REVIEWED AND APPROVED:

Penelope Cullum

City Administrator

INITIATED AND APPROVED:

[Signature]

Director of Economic Development

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EXHIBIT "A"

LEGAL DESCRIPTION

Portion APN 142-103-025

THE SOUTHERLY 25 FEET OF LOT 7, IN BLOCK C, TRACT NO. 522, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 19, PAGE 49 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY.

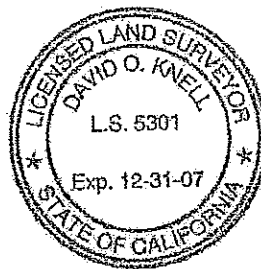
CONTAINS 2875 SQUARE FEET, MORE OR LESS

As shown on Exhibit "B" attached hereto and by this reference made a part hereof

Prepared under my supervision:

David O. Knell 7/13/05
David O. Knell PLS 5301 Date

C:\hunt-beach\heli\142-103-025
July 1, 2005



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EXHIBIT "B"

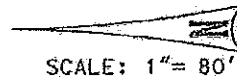
BEACH BOULEVARD

ALHAMBRA AVENUE

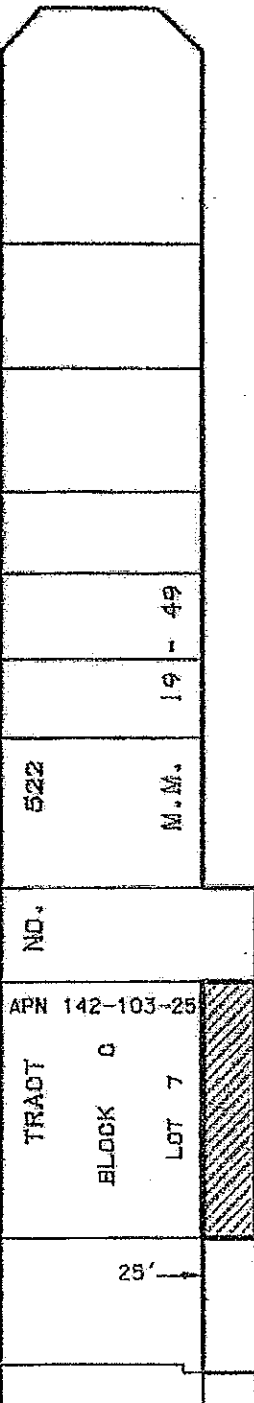
AVENUE



INDICATES AREA OF
RIGHT-OF-WAY
DEDICATION



SCALE: 1" = 80'



80'

55'

25'

HEIL AVENUE



WILLDAN
ENGINEERS • PLANNERS
13191 CROSSROADS PARKWAY NORTH, SUITE 405
INDUSTRY, CA. 91746-3497
(562) 908-6200

SCALE 1" = 80'	DATE JULY 12, 2005
DRAWN BY D. BEYERBACH	142-103-25.DGN
CHECKED BY D. KNELL	HUNTINGTON BEACH/ HEIL

SKETCH TO ACCOMPANY
LEGAL DESCRIPTION

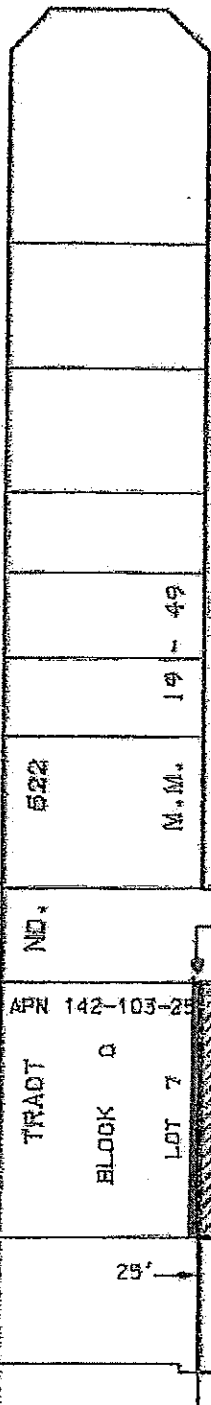
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EXHIBIT "C"

BEACH BOULEVARD

ALHAMBRA AVENUE

AVENUE



55'

80'

HEIL

25'

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